

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11044 OF 2016

Kanhu s/o Rajaram Rede,
Age-55 years, Occu:Service,
R/o-Madadgaon, Post-Bhajitodi,
Tq. & Dist-Ahmednagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
Planning Department,
Mantralaya, Mumbai,
- 2) The Superintending Engineer,
Public Works Division,
Aurangabad Road, Ahmednagar,
- 3) The Executive Engineer,
Public Works (EGS) Division,
Ahmednagar,
- 4) The District Collector,
Dist-Ahmednagar.

...RESPONDENTS

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Mr.A.D. Sugdare Advocate for Petitioner.
Mr.S.S. Dande, A.G.P. for Respondent
Nos. 1 to 4.

...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 23RD JANUARY, 2018

DATE OF PRONOUNCING JUDGMENT: 2ND FEBRUARY, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. Initially the Petitioner was appointed as Muster Assistant in Public Works (E.G.S.) Division, Ahmednagar under the Employment Guarantee Scheme. The Petitioner worked as muster assistant for considerable period but his services were not made permanent and therefore, the Petitioner filed Complaint (ULP) No.266 of 1989 before the Industrial Court, Ahmednagar alleging commission of unfair labour practices covered by Item Nos.5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971

(for short "MRTU & PULP Act, 1971). The said complaint along with other complaints, was disposed of by the Industrial Court, Ahmednagar by Judgment and Order dated 29th December, 1994. The learned Member, Industrial Court, Ahmednagar directed that status and privileges of permanency with consequential benefits from the date of filing of the complaint be conferred on the Petitioner. The said order passed by the Industrial Court was not challenged by the Respondents.

3. In the meantime the Government of Maharashtra prepared scheme of absorption of muster assistants into regular service to be governed by the Government Resolution dated 1st December, 1995 as modified from time to time. In view of the said scheme, the Petitioner was given appointment as peon in the office Special Land Acquisition Officer, Collector Office, Ahmednagar vide order dated 12th December, 2007. While giving

such appointment as peon, his pay in the pay-scale of Rs.750-940 on the post of muster assistant was also protected. It is the case of the Petitioner that Government of Maharashtra in Planning Department issued Circular dated 15th April, 2009, whereby it is decided that muster assistants would not be entitled to count their past services as qualifying service for grant of pension. It is submitted that the said Circular dated 15th April, 2009 is not attracted in the case of the Petitioner, as in the Complaint filed by the Petitioner, the Industrial Court, Ahmednagar directed that status and privileges of permanency with consequential benefits from the date of filing of the complaint be conferred on the Petitioner. By way of filing this Petition, the Petitioner has prayed that Respondents be directed that for the purpose of grant of pensionary benefits, he shall be treated as permanent employee with effect from the date of filing Complaint (ULP) No.266 of 1989 till the date of

his superannuation.

4. Learned counsel appearing for the Petitioner invites our attention to the Judgment and order passed by the Division Bench of this Court (CORAM: S.S. SHINDE & SANGITRAO S. PATIL, JJ.) on 7th April, 2016, in Writ Petition No.11183 of 2015 (Arun s/o Baburao More vs. State of Maharashtra and others) and other two Writ Petitions. It is submitted that the Petitioners therein were also working as muster assistants and they have filed complaints before the Industrial Court, Ahmednagar. In the said complaints directions were given by the Industrial Court to the Respondents therein to confer status and privileges of permanency and other consequential benefits from the date of complaints filed in the Industrial Court. In the said group of Petitions, the Division Bench of this Court passed order that, the Petitioners shall be treated as permanent employees with effect from the date of

filing the respective complaints till the respective dates of superannuation. Learned counsel further submits that the same relief is being claimed by the Petitioner in the present Writ Petition.

5. Learned A.G.P. referring to the affidavit in reply filed by one Jyoti Kaware, presently working as Deputy Collector (Resettlement) and having additional charge as Deputy Collector (E.G.S.), in the office of the District Collector, Ahmednagar, submits that the Government of Maharashtra vide G.R. dated 1st December, 1995 has framed the scheme to absorb muster assistants in Government service. In the said G.R., muster assistant who were working as on 31st May, 1993 were to be included in the seniority list for their further absorption in the Government service. According to the above said G.R., the Petitioner has accepted order of appointment dated 12th December, 2007 as a peon. Hence principle of

waiver will apply in this case as he waived his right for counting of his earlier service while absorbing in the Government service therefore the prayer made by the Petitioner for counting service as muster assistant is not permissible under service jurisprudence. As per the said G.R., the muster assistants were not entitled for any Government benefits and also will not be recognized as Government employees. The Maharashtra Civil Services (Pay) and (Pension) Rules are also not applicable to them. In clause No. 5.2 of the said G.R. dated 1st December, 1995 it is clearly stated that the mustering assistants are not entitled for any benefits except payment and they shall not be treated as Government servants. It is submitted that the Petitioner approached the Industrial Court for grant of permanency by filing Complaint (ULP) No.266 of 1989 and the Industrial Court has granted permanency to the Petitioner. However the said benefit was never extended to the Petitioner in

view of order passed by the Hon'ble Supreme Court in Civil Appeal No.15339 of 1996 arising out of Special Leave to Appeal (Civil) No.15654 of 1991 (State of Maharashtra and others vs. Subhash Narayan Ahirrao). It is submitted that the muster assistant is not a "workman" under the provisions of the Industrial Disputes Act. It is further submitted that as per Government Circular dated 15th April, 2009, the date of absorption of muster assistant in Government service is the date of starting his Government service. The benefits of permanent Government service have been given to the Petitioner from the date of joining the post of peon. It is submitted that there is no substance in the contentions raised by the Petitioner. Hence it is prayed that the Writ Petition may be rejected.

6. We have carefully considered the submissions of the learned counsel appearing for the Petitioner and learned A.G.P appearing for

the State. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, and the affidavit in reply filed on behalf of the Respondents.

7. In the similar fact situation, the Division Bench of this Court (CORAM: S.S. SHINDE & SANGITRAO S. PATIL, JJ.), in Writ Petition No.11183 of 2015 and other two Writ Petitions, referred above, on 7th April, 2016, this Court has passed following order:

"1. In view of the Judgment and order dated 29.12.1994 passed by the learned Industrial Court, Ahmednagar, for the purpose of considering the grant of pensionary benefits, the petitioners shall be treated as permanent employees with effect from the date of their complaints i.e. from the date of filing of their respective ULP's till the respective dates of superannuation.

2. In case of the Petitioners who were already superannuated, it will be open for them to make a representation to the concerned Authorities for grant of pensionary benefits.

3. If such representation is made, same shall be decided as expeditiously as possible and preferably within a period of four months from the date on which the representations are made.

4. We make it clear that, apart from issuing directions regarding the date of permanent employment of the respective Petitioners, we have not examined the case of the Petitioners as regards the eligibility of pensionary benefits.

5. Rule is made partly absolute on above terms with no order as to costs."

8. The Petitioner herein is in employment and not yet superannuated. Taking the same view and for the same reasons as stated in the Judgment

and order dated 7th April, 2016 passed in Writ Petition No.11183 of 2015 and other connected Writ Petitions, referred above, we pass following order:

O R D E R

I) In view of the Judgment and Order dated 29th December, 1994 passed by the learned Industrial Court, Ahmednagar, for the purpose of considering the grant of pensionary benefits, the Petitioner shall be treated as Permanent Employee with effect from the date of his filing complaint, till the date of superannuation.

II) We make it clear that apart from issuing directions regarding the date of permanent employment of the Petitioner, we have not examined the case of the Petitioner as regards the eligibility of pensionary benefits.

III) Rule made absolute on above terms.

IV) The Writ Petition stands disposed
of, accordingly.

[S.M. GAVHANE, J.]

asb/JAN18

[S.S. SHINDE, J.]